

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

# VIRNETX INC. AND LEIDOS, INC.

V.

APPLE INC.

¶¶¶¶¶

**Civil Action No. 6:12-cv-855-RWS**

## **Jury Trial Demanded**

**JOINT NOTICE REGARDING MEET AND CONFER  
AND AGREEMENT RELATING TO CERTAIN MOTIONS IN LIMINE**

Pursuant to the Court’s September 1, 2020 Order (Dkt. No. 937) VirnetX, Inc. (“VirnetX”) and Apple Inc. (“Apple”) file this Joint Notice Regarding Meet And Confer and Agreement Relating To Certain *Motions In Limine*.

On September 8th, 2020, the parties met and conferred regarding VirnetX’s belief “that it is necessary to tell the jury VPN on Demand was found infringing over Apple’s objection,” and whether “Apple [could] rebut that point with evidence of its good-faith defenses.” (*Id.* at 11, n.2). The parties agree that they may state in front of the jury: (1) “it has been determined that VPN on Demand infringes” (*id.* at 10). According to the Court’s rulings, the parties agree that they will not reference that VPN on Demand was found infringing over Apple’s objections (*id.* at 11) nor will they reference that Apple had a good-faith belief in the non-infringement of VPN On Demand (*id.* at 6-7).

VirnetX and Apple also agree that they, their counsel, representatives, and all witnesses tendered by them (whether live or by deposition) will not mention, refer to, interrogate about, or attempt to convey to the jury in any manner, either directly or indirectly, any of the matters set forth below without obtaining a favorable ruling from this Court outside the presence and hearing

of the prospective jurors or the jury ultimately selected in this case. Both parties will also warn and caution each witness to follow the same instructions.

- Any reference to prior findings of willfulness, enhancement, or awards of attorney's fees in the -417 or -855 Actions. (Apple's Motion *In Limine* III) (Dkt. No. 895).
- Any reference that Apple, the witnesses, and the lawyers are from out of state. (Apple's Motion *In Limine* IV) (Dkt. No. 895).
- The parties will approach before referencing discovery disputes and any interactions of counsel related to the dispute, and before otherwise commenting that a party/lawyer from whom discovery was sought failed to exchange or share information. With respect to closing arguments, VirnetX will provide its closing slides, including any slides to be used on rebuttal, in a binder to Apple when VirnetX's lead counsel approaches the podium to begin closing argument. Apple will provide its closing slides in a binder to VirnetX when Apple's lead counsel approaches the podium to begin closing argument. To the extent a particular slide is not used in a party's closing, the other party may not use that slide. (Modification to Apple's Motion *In Limine* VI) (Dkt. No. 895).

Dated: September 8, 2020

/s/ Jason D. Cassady

Bradley W. Caldwell  
Texas State Bar No. 24040630  
E-mail: bcaldwell@caldwellcc.com  
Jason D. Cassady  
Texas State Bar No. 24045625  
E-mail: jcassady@caldwellcc.com  
John Austin Curry  
Texas State Bar No. 24059636  
E-mail: acurry@caldwellcc.com  
Daniel R. Pearson  
Texas State Bar No. 24070398  
Email: dpearson@caldwellcc.com  
Warren J. McCarty, III  
Texas State Bar No. 24107857  
E-mail: wmcparty@caldwellcc.com  
Hamad M. Hamad  
Texas State Bar No. 24061268  
Email: hhamad@caldwellcc.com  
**CALDWELL CASSADY CURRY P.C.**  
2121 N. Pearl St., Suite 1200  
Dallas, Texas 75201  
Telephone: (214) 888-4848  
Facsimile: (214) 888-4849

Robert M. Parker  
Texas State Bar No. 15498000  
Email: rmparker@pbatyler.com  
R. Christopher Bunt  
Texas State Bar No. 00787165  
Email: rcbunt@pbatyler.com  
**PARKER, BUNT & AINSWORTH, P.C.**  
100 East Ferguson, Suite 1114  
Tyler, Texas 75702  
Telephone: (903) 531-3535  
Telecopier: (903) 533-9687

**ATTORNEYS FOR PLAINTIFF**  
**VIRNETX INC.**

Respectfully submitted,

/s/ Leslie Schmidt

Gregory S. Arovas  
greg.arovas@kirkland.com  
Robert A. Appleby  
robert.appleby@kirkland.com  
Jeanne M. Heffernan  
jeanne.heffernan@kirkland.com  
Joseph A. Loy  
joseph.loy@kirkland.com  
Leslie Schmidt  
leslie.schmidt@kirkland.com  
**KIRKLAND & ELLIS LLP**  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

Michael E. Jones, **Lead Attorney**  
Texas Bar No. 10969400  
mikejones@potterminton.com  
**POTTER MINTON**  
A Professional Corporation  
110 N. College Avenue, Suite 500  
Tyler, Texas 75702  
Telephone: (903) 597-8311  
Facsimile: (903) 593-0846

**ATTORNEYS FOR APPLE INC.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on September 8, 2020.

/s/ Jason D. Cassady  
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